

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

74-2549

ORIGINAL

To be argued by
SAMUEL BOXER

B
MS

In The
United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

DOMINIC MECCA,

Defendant-Appellant.

**BRIEF AND APPENDIX
FOR DEFENDANT-APPELLANT**

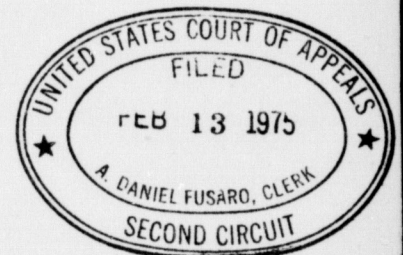
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

Docket No. 74-2549

DOMINIC MECCA,

Defendant-Appellant.

STATEMENT

The defendant appeals from a judgment and sentence entered herein on or about November 22, 1974, wherein the defendant was sentenced by the United States District Court, Southern District of New York (Hon. Morris Lasker, United States District Judge, presiding) to a concurrent term of one year on each count and two years special Parole. The defendant was convicted after a jury trial had in or about September 16, 18, 20, 21 and 23, 1974. The defendant was tried on an indictment (73 Cr. 1102) (Appendix A) charging him with conspiracy to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code, and in Count 2 the violation of Sections Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B). The appellant was found guilty by the jury on both counts and sentenced as

aforesaid on November 22, 1974. An appeal was duly filed and the appellant in this brief raises two points which are constitutional in nature and are stated below.

At the trial level, the defendant appellant was represented by Samuel Boxer, of White Plains, New York, who is also representing him on this appeal. The Government is represented by Paul J. Curran, Esq., United States District Attorney, by Daniel J. Pykett, Esq., Assistant United States Attorney, of counsel.

Prior to the trial, Mr. Mecca was severed from the other defendants. The other defendants were tried first. In the first trial in which Mr. Mecca took no part, the jury found defendants Belanger, Vissu and Wilner guilty. Upon information and belief, Wilner and Belanger are appealing.

Defendants Palmer, Calabro and Adams were also severed for other reasons. Calabro and Adams were not arrested. Palmer pleaded guilty to the first count and testified for the Government. Defendant Mecca did not testify.

IMPORTANT NOTE:

(Tape 22 allegedly obtained on February 22, 1973, and referred to in trial minutes as Government Exhibit 40B, TR. 364 and for abbreviated purposes is referred to in this Brief from time to time as Tape 22.)

QUESTIONS PRESENTEDFIRST QUESTION

The first constitutional question presented is that assuming for a moment that a defendant makes a preliminary motion to suppress an alleged tape recording to a lower Court which had presided at a previous trial of a group of severed codefendants wherein the same alleged tape recording was used (Exhibit 40B, Tr. 359 to 364, inclusive), should there have been a preliminary hearing, and if not, why not, and if not, were the rights of the defendant prejudiced?

So the simple question devolves on this point: Was Judge Lasker following the proper procedure and did he make a proper order when he denied a motion to suppress tape 22 (Exhibit 40B) and for a hearing (see Appendix B), and further denied a motion during trial. (Tr. 359 to 364, inclusive, and 447 [a related topic of entrapment 468] 492, 493, 494, 495, 496, 499.)

SECOND QUESTION

WAS THERE ENTRAPMENT OF DEFENDANT MECCA?

THE EVIDENCE

Generally speaking, the Government's case revealed an alleged conspiracy to smuggle marijuana from Jamaica, West Indies, to Long Island in the Bahamas and then by boat to Miami, Florida. The trip or trips were to be made in a plane owned by Defendant Wilner and flown by Palmer from Jamaica to Long Island. On or about March 7, 1973, Smith and Thurlow were arrested in the Bahamas allegedly with 700 lbs. of marijuana, dropped by airplane flown by Palmer. After a trial in the Bahamas, Thurlow and Smith were found guilty and sentenced to one year. While in jail in the Bahamas, agents of the United States Government visited them and tried to get various information implicating other conspirators. In any event, not too long after that Thurlow was released. It seems Thurlow also had a case pending in Boston and somehow he got out of that. Mitchell testified that Wilner had employed him to carry certain amounts of marijuana in an automobile and he was intercepted by a New Jersey State Trooper in June 1973, and prior to a trial, he pleaded guilty and received a sentence of years. He was also released by reduction of bail from \$30,000. to \$1,000. after agent DeMicco visited him in jail.

It turned out that Palmer was a double agent; in other words, he was a special agent for the Government at one

point and then went into business for himself, so to speak, but at the time Tape 22 was taken he was definitely an agent for the Government working for Mr. DeMicco, also a Government agent (Tr. 431, et seq). The natural question which arises of course is was Palmer "Police Oriented"? The only thing that could determine this "of course" is a hearing. See for example, People v. Ruppert, 26 NY2d 437, 442, 443 cert den 404 US 939; People v. Valerious, 31 NY2d 51, 55; People v. James G. Agnostopulos, 77 Misc 2d 668, 671.

Upon information and belief, Palmer received certain inducements, namely, retention of his pilot's license, immunity from a tax fraud case, plus an easy sentence, namely, a fine of \$2,500. and 3 years probation, imposition of which was suspended (which he got after Mecca's case was over).

In a preliminary motion (Appendix B), appellant made the point that he did want to cross-examine Mr. DeMicco, the Government agent who was working with Mr. Palmer in obtaining the statement revealed in Tape 22, and thus to show their combined relationship. Again, during the trial appellant made the same request to obtain Mr. DeMicco and the excuse was made by Mr. Pykett that Mr. DeMicco was in Jamaica and unavailable which Judge Lasker went along with and refused an adjournment or continuance so the defendant never had the benefit of DeMicco's testimony either before trial or during trial (Tr. 492 thru 499).

POINT I

UNDER THE DUE PROCESS CLAUSE, THE PROSECUTION'S SUPPRESSION OF MATERIAL EVIDENCE JUSTIFIES A NEW TRIAL IRRESPECTIVE OF THE PROSECUTION'S GOOD FAITH OR BAD FAITH.

The repeated denials of appellant's applications for a preliminary hearing concerning Tape 22 and the suppression thereby by the prosecution of agent DeMicco's testimony either by objection to the preliminary motion or the refusal to have agent DeMicco testify severely limited the appellant's approach as to his violation of his Miranda rights.

There is no question that no Miranda rights were given and there is no question that no search warrant was obtained or any wire tapping Court order. Instead the prosecution depended on the consent theory under Lopez v. U.S. and under Hoffa v. U.S. It is the contention and has been the contention of the appellant that the consent of a "Police Oriented" agent such as Palmer was, is insufficient as a matter of law to justify the Government or the Court in opposing and denying a motion for a factual preliminary hearing.

n (1, 2)
n-1 -373 U.S. 427 (1963)

n-2 -385 U.S. 293 (1966)

The fact of the matter is that except for Palmer's statements there is no testimony that places Mr. Mecca with the other defendants on February 22, 1973. The Government requested the jury to believe Mr. Palmer; to trust his veracity and memory. Palmer's testimony reveals that a year had lapsed from the time the tape was recorded up until the time he listened to it. By that time he had been indicted and it was only then that he placed Mecca in the conversation making statements attributed to Belanger in the original transcript. (See Palmer's conflicting testimony on this point (Tr. 536). Furthermore, Mr. Palmer did not even remember how long the testimony lasted. He stated 1 or 1 1/2 hours. The testimony revealed that it lasted at least 4 hours. It is obvious that Mr. Palmer was trying to save his own skin (which he did). The Government wanted Mr. Mecca and he, Palmer, gave them Mecca. The important prejudicial point is that the Government is responsible for the truth and veracity of this evidentiary tape and its excerpts, and the truth and veracity of the conversations which allegedly took place on February 22, 1973. The Government was supplying a written transcript of the excerpts to follow while the jury listened to the tape. In the transcript, certain statements were attributed to various defendants in this case by name.

Mr. Palmer testified that he did not help in the preparation of the transcript. He testified that about one year later he made a few changes particularly certain statements attributed to Belanger and attributed them to Mecca. However, to this date, the Government has not told us who prepared the original transcript. They have not told us who attributed the statements to Mecca so apparently, it was someone other than Palmer who prepared the transcript. Our best guess is the one who did was Mr. DeMicco who to this day has not appeared for confrontation with the appellant Mecca.

This writer is positive that the Government will admit that a suppression of Tape 22 will result in a dismissal of the indictment because without this tape, the Government has no case against appellant Mecca.

THE QUESTION OF CONSENT

This writer realizes

"that ordinarily the transmission by an informant by means of a radio device concealed on his person of incriminating conversations with defendants to the Police is not a violation of defendants' constitutional rights."

People v. Gibson, 23 NY2d 618 cert. den. 402 U.S. 951, 1971; U.S. v. Kaufer (406 F2d 550, Second Circuit).

However, this writer was of the opinion that the consent alluded to in those cases was satisfactorily established where, however, the consent as in the instant case is far from satisfactorily established, and in fact seems to have come a year after its being made, and after Palmer's arrest almost one year later as well, it is respectfully submitted that a hearing should be held as indicated in *People v. Ruppert*, supra.

It is therefore respectfully submitted that this case should at least be held in abeyance and sent back for a hearing on the question of consent. (*Ring v. U.S.* 42 L.Ed. 2d, 29.)

P R O B E

It is defense counsel's job to probe in detail for his client's alleged PARTICIPATION, PRESENCE, or even PROBABLE PRESENCE, in alleged conversations in the premises as to Tape 22, and to view if possible the Government records of eavesdropping or wire tapping. It is respectfully submitted that it is up to defense counsel to determine these points and not the trial Court as is set forth in Rule 41E of the Federal Rules of Criminal Procedure, which states "the Judge shall receive evidence on any issue of fact necessary to the decision of the motion." In this case, defense counsel tried to raise the issue but was denied and

shut out of any opportunity even to argue the point, preliminarily or trial wise. See for example *Gouled v. U.S.* 255 U.S. 298, 313; *Jackson v. Denno*, 378 U.S. 368; *Grant v. U.S.*, 282 F.2d, 165, 170 (2d Cir. 1960) "Evidentiary hearings should not be set as a matter of course but only when the petition alleges facts which if proved would require the grant of relief."

POINT IIENTRAPMENT

It is respectfully submitted that the Court should have submitted the question of entrapment to the jury under proper instruction. The appellant here respectfully submits to this Court that Judge Lasker was incorrect in his ruling in not giving the question under proper instruction to the jury (Tr. 468). This case is rather unusual in that Palmer who was (Mr. DeMicco's) hired entrappor actually flew the marijuana in question here from Jamaica to Long Island in the Bahamas. Without that flight, none of the alleged co-conspirators would have been involved in the importation of a 'controlled substance'. The cross-examination of Mr. Palmer on this point was restricted by the Court and therefore, the only point that could be made here by the appellant is that the case should be sent back for further hearing on this point because no facts were actually allowed to be developed.

One Federal District Court Judge has stated that any such judicial inquiry should occur following the trial because "relevance.....depends on the whole context of circumstances developed at trial." In U.S. v. McCarthy, 92 F.Supp. 937, 944 (SDNY 1968), the Court concluded that

"common sense, judicial economy and protection of the Government's case required such a result."

The Court will please understand that although the appellant did not testify, he would have testified at the preliminary hearing if one was afforded to him.

CONCLUSIONTHE DEFENDANT-APPELLANT DID
NOT HAVE A FAIR TRIAL

It is respectfully submitted that the defendant did not receive a fair trial because the fundamental meaning of the Jencks Act, 18 USC, §3500, was fundamentally violated for the various reasons set forth above (Brady v. Maryland, 373 US 83) since a prior audibility hearing was not held; nor the preliminary hearing suggested in Point I; and the question of entrapment was not given to the jury (33 ALR2d 902), nor was a preliminary hearing held as to the role of Agent DeMicco (Ring v. U.S., supra).

It is therefore respectfully submitted that a new trial be had or, in the alternative, that a preliminary hearing be ordered pending the solution and determination of this case.

All of which is respectfully submitted.

DATED: White Plains, New York
February 10, 1975

SAMUEL BOXER
Attorney for Defendant-
Appellant DOMINIC MECCA

JUDGE LASKER

73 CRIM. 1102

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.:
ES.		Daniel Pykett, AUSA
		264-6394
JAMES ADAMS		
RICHARD BELANGER		
NICHOLAS CALABRO		
DOMINIC MECCA		
RICHARD PALMER		
STEVEN SMITH		For Defendant:
GARY STEPHAN		
PAUL STEPHAN		
ROBERT VISSA		
ROBERT WILNER and JOHN DOE, a/k/a Anthony		

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(07)					
Fine \$5.50 MAILED-2-5-9		1/1/74	Mecca	✓	
Clerk,		1/1/74	Mecca		✓
Marshal,		1/1/74	Mecca		✓
Attorney,		1/1/74	Mecca		✓
COMM. ON CRIM. JUST. T. 21		1/1/74	Mecca		✓
BY RICHARD 846,963,841(a)(1),(b)					
str. & possess. w/intent to					
str. Marihuana, I(Ct.2)					
isp. so to do.(Ct.1)					
(Two Counts)					

DATE	PROCEEDINGS
2-7-73	Filed indictment.
2-17-73	Adams(No appearance by attorneys. Court directs entry of Mecca(not guilty plea. Calabro(Belager(John Doe(Visa(Smith(Mecca- continued on bail fixed by Mag. (\$10,000. secured by \$500.) Palmer-(atty. present) Pleads not guilty. Cont'd on bail fixed by Mag. (10,000P.R.B. secured by 10 %) (Cont'd)

Docket Entries

2a

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFEN
12-17-73	Wilner(atty. present) Plea not guilty. Bail continued \$5,000. P.R.B.)		
	Gary AND Paul Stephan(Court directs entry of not guilty Plea. Bail continued as set by Mag. Paul Stephan \$10,000. P.R.B. secured by \$500. and Gary Stephan \$10,000. P.R.B. secured by 10%.		
	Motions returnable in 30 days. Case assigned to Judge Lasker for all purposes. Frankel, J.		
1-7-74	RICHARD PALMER - Filed notice of appearance by Warren B. Silbericlett, 200 Mamaroneck Ave. White Plains, N.Y. 10601 914-RO 1-1771.		
1-9-74	VISSA - PLEADS NOT GUILTY - P.R.B. of \$2,500. BELANGER - Pleads not guilty - P.R.B. \$2,500. CALABRO - Pleads not guilty. WILNER - Pleads not guilty. LASKER, J.		
1-11-74	SMITH Deft. Pleads not guilty - P.R.B. \$2,500. LASKER, J.		
1-15-74	ROBERT VISSA - Filed deft. motion to inspect Grand Jury Minutes Dismissing Indictment. Granting B/P, etc. (with statement) (N ^O affdvt.)		
2-1-74	PAUL STEPHAN - Filed notice of motion and affdvt. for discovery.		
2-1-74	PAUL STEPHAN- Filed memo of law.		
2-19-74	DOMINIC MECCA - Filed notice of motion for b/p, & affdvt. in support.		
1-21-74*	STEPHEN SMITH. Filed CJA Form # 20, appointment of counsel Stuart R. Shaw, 233 B'Way., NYC. 10007 233-8991. LASKER, J.		
2-1-74	Filed the following papers received from U.S. Magistrate: Docket Sheet, Indictment Warrant, Disposition Sheet, Notice of Appearance and Appearance bond G.S. \$10,000, D.M. \$10,000., R.P. \$10,000., R.W. \$5,000., P.S. \$10,00, N.C. \$10,000., R.B. \$2,500.		

Cont'd on page 3

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LASKER, J.

DATE	PROCEEDINGS
3-15-74	RICHARD PALMER - Filed order extendint bail limits to Carribean & South America from March 31-74 and to including 4-20-74. LASKER, J.
3-20-74	Filed Govt's memo of law in opposition to various mctions.
4-3-74	STEPHEN SMITH - Filed notice of motion for B/P. Ret. 4-15-74. With Affdvt.
4-24-74	STEPHEN SMITH - Filed affdvt. and notice of motion for dismissal of indictment, etc ret. 5-3-74. Affvdt. in support.
4-26-74	ROBERT WILNER - Filed deft. affdvt. and notice of motion pursuant to R,14; Re.Trial.
4-26-74	ROBERT WILNER - Filed deft. memo of law.
5-3-74	STEPHEN SMITH. - Filed defts. memo of law in support of motion to dismiss indictment.
5-10-74	JAMES ADAMS - Filed CJA Form # 21 Authorization and voucher for transcrip. LASKER, J.
6-20-74	RICHARD PALMER- Filed Judgment & Order of Probation - /(#74,558) It is Adjudged that the imposition of sentence of imprisonment is suspended and the Deft is placed on Probation for a period of THREE (3) YEARS subject to the standing probation order of the court and the Deft is FINED the sum of \$2,500.00 to be paid within ninety (90) days hereof or the Deft is to stand committed. Count two (2) is dismissed on the motion of the Deft. --- LASKER, J.
5-6-74	RICHARD PALMER- (AUSA Pykett) Deft, (Atty present) pleads GUILTY to Count 1. Pre-sentence report ordered. Sentence date 6-14-74. Deit. R.O.R. DOMINIC MECCA- Severed.
5-7-74	Jury Trial begun for Deit's= BELANGER, CALABRO, SMITH, G. STEPHAN, P. STEPHAN, VISSA, & WILNER. - LASKER, J.
5-8-74	Trial cont'd.
5-9-74	Trial cont'd.
5-10-74	Trial cont'd.
5-13-74	Trial cont'd.
5-14-74	Trial cont'd.
5-15-74	Trial cont'd.
5-16-74	Trial cont'd.
5-17-74	Trial cont'd.
5-20-74	Trial cont'd.
5-21-74	Trial cont'd.
5-22-74	Trial cont'd.
5-23-74	Trial cont'd. Deit's CALABRO & SMITH, count 2 of Indictment dismissed, order of LASKER, J.
5-24-74	Trial cont'd - Jury started deliberaltion at 4 PM and reached a verdict. R.BELANGER - found GUILTY on Ct.1 & 2. Pre-sentence report ordered. Date for sentence is July 12, 1974 @ 10 AM. R.VISSA - found GUILTY on Cts.1 & 2. Pre-sentence report ordered. Date for sentence is July 12, 1974 @ 10 AM. R.WILNER - found GUILTY on Cts.1 & 2. Pre-sentence report ordered. Date for sentence July 12, 1974 @ 10 AM.

DATE	PROCEEDINGS
	N. CALABRO - found NOT GUILTY On COUNT 1.
	S. SMITH - found NOT GUILTY On COUNT 1.
	G. STEPHAN - found NOT GUILTY On COUNTS 1 & 2.
	P. STEPHAN - found NOT GUILTY On COUNTS 1 & 2. --- LASKER, J.
JUN 10-74	Filed transcript of record of proceedings, dated MAY 7, 8, 9, 10, 13, 14, 1974.
JUN 10-74	Filed transcript of record of proceedings, dated MAY 15, 16, 17, 20, 21, 1974.
JUN 10-74	Filed transcript of record of proceedings, dated MAY 22, 23, 24, 1974.
7-12-74	RICHARD BELANGER- Filed Judgment & Commitment - It is Adjudged that the Deft. is hereby committed to the custody of the Atty. General for imprisonment for a period of ONE (1) YEAR, on each of counts 1 & 2, said sentence to run concurrently and not consecutive. At the expiration of such custody the Deft. shall serve a SPECIAL PAROLE term of TWO (2) YEARS subject to the provisions of Title 21, Sec. 841 (a)(1)(B). --- LASKER, J.
7-12-74	ROBERT VISSA- Filed Judgment & Commitment- It is Adjudged that the Deft. is hereby committed to the custody of the Atty. General for imprisonment for a period of ONE (1) YEAR and on the condition that the Deft. be confined in a jail or treatment type institution for a period of SIX (6) MONTHS, the execution of the remainder of the sentence of imprisonment is suspended and the Deft. placed on probation for a period of SIX (6) MONTHS subject to the standing probation order of this court, and thereafter to a TWO (2) YEAR SPECIAL PAROLE period subject to the provisions of Title 21, Sec. 841 (b)(1)(B). Said sentences are to be served concurrently and not consecutively. --- LASKER, J.
7-12-74	RICHARD BELANGER- Filed Notice of Appeal to U.S.C.A., 2nd Circuit from the Judgment of conviction dtd 7-12-74. Deft. granted permission to file appeal in forma pauperis. LASKER, J. (Copies Mailed)
7-15-74	ROBERT VISSA- Filed deft's notice of Appeal from the judgment dated 7-12-74. Mailed Notice to Deft, c/o Vincent W. Lanna, Esq. 50 Riverdale Ave. Yonkers, NY and copy to US Atty.
7-19-74	Filed Govt's memo. of law.
7-19-74	Filed Govt's Affidavit in opposition to deft's Wilner's motion for severance pursuant Fed. R. Crim. P. 14
7-23-74	Filed transcript of record of proceedings, dated MAY 6, 1974
7-23-74	ROBERT VISSA- Filed Notice - The Record on Appeal has this day been certified and transmitted to the U.S.C.A., 2nd Circuit.
7-29-74	RICHARD BELANGER- Filed Notice that the Supplemental record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit.
8-19-74	Filed transcript of record of proceedings, dated JUNE 21, 1974
8-21-74	RICHARD BELANGER- Mailed Original CJA copy to the A.O., WASH DC, for Payment- LASKER, J.
8-13-74	RICHARD BELANGER- Filed CJA for service of Court Reporter on 1/9, 4/25, 5/21, 5/7.. LASKER, J.
8-13-74	ANISA Pykett, Deft WILNER. (Atty James La Rosa) present.

Docket Entries

5a

1102

Page #5

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DATE	PROCEEDINGS
8-26-74	Stephen Smith= Mailed Original CJA copy 1 to the A.O. Wash D.C. for payment. LASKER, J.
8-26-74	Gary Stephen = Mailed Original CJA copy 1 to the A.O. Wash D.C. for payment. LASKER, J.
9-4-74	DOMONIC MECCA= Filed Deft's Motion to Suppress or For a Pretrial Hearing.
9-5-74	DOMONIC MECCA= Filed affdvt of Daniel J. Pykett, Special Asst US Atty, in opposition to the motion of Deft to suppress.
9-10-74	Richard Belanger= Notice to Docket Clerk the record has been certified and transmitt to USCA on 9-10-74.
9-10-74	Dominic Mecca= Memo-end on back of motion filed 9-4-74.... Motion denied. It Is So Ordered... Lasker, J. m/n
9-16-74	DOMINIC MECCA= Jury Trial begun - LASKER, J.
9-13-74	Trial cont'd. Defts motion for enlargement of Bail + encompass the Dist. of Conn.
9-19-74	Trial cont'd.
9-20-74	Trial cont'd.
9-21-74	Trial cont'd.
9-23-74	Trial cont'd and concluded. Jury return @ 3:20 PM with a verdict of GUILTY on Counts 1 and 2. P.S.I. Ordered. Sentence adj'd to 11-22-74 @ 10:00 AM, Rm#1105. Bail continued. - LASKER, J.
10-17-74	RICHARD PALMER= Filed Original Judgment and Order of Probation - Fine marked satisfied and entered in the money judgment book.
10-31-74	JAMES ADAMS= } JOHN DOE = } Closed statistically because X defendant is () co-defendant a () witness) fugitive. In all other respects this case is still pending.
11-22-74	DOMINIC MECCA= Filed Judgment & Commitment - It is Adjudged that the Deft. be committed to the custody of the Atty General for a period of One (1) Year on each of Counts 1 and 2, said sentence to run concurrently and not consecutively. At the expiration of such custody, the Deft. shall serve a Special Parole term of Two (2) Years subject to the provisions of Title 21, Section 841 (b)(1)(B). ---LASKER, J.
11-25-74	DOMINIC MECCA= Filed Notice of Appeal to U.S.C.A. for the Second Circuit from the sentence imposed 11-22-74. Deft granted leave to appeal in forma pauperis --LASKER, J.

INDICTMENT

6a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JAMES ADAMS,
RICHARD BELANGER,
NICHOLAS CALABRO,
DOMINIC MECCA,
RICHARD PALMER,
STEVEN SMITH,
GARY STEPHAN,
PAUL STEPHAN,
ROBERT VISSA,
ROBERT WILNER, and
JOHN DOE, a/k/a "Anthony",

INDICTMENT

73 Cr.

1102

Defendants.

The Grand Jury charges:

1. From on or about the 1st day of August, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, JAMES ADAMS, RICHARD BELANGER, NICHOLAS CALABRO, DOMINIC MECCA, RICHARD PALMER, STEVEN SMITH, GARY STEPHAN, PAUL STEPHAN, ROBERT VISSA, ROBERT WILNER, and JOHN DOE, a/k/a "Anthony", the defendants, and Gerald Mitchell and Richard Thurlow, named herein as co-conspirators and not as defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

Indictment

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

3. It was further a part of said conspiracy that the said defendants would unlawfully, wilfully and knowingly import into the customs territory of the United States from a place outside thereof and import into the United States from a place outside thereof Schedule I and II narcotic drug controlled substances in violation of Sections 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about August, 1971, defendants PAUL STEPHAN, DOMINIC MECCA and co-conspirators Richard Thurlow went to Montego Bay, Jamaica, West Indies by boat.

2. In or about February, 1973, defendants JAMES ADAMS, DOMINIC MECCA and RICHARD BELANGER met and had a conversation in Florida.

3. In or about February, 1973, the defendant JAMES ADAMS

paid defendant ROBERT WILNER approximately \$12,000.

4. In or about February, 1973, defendant ROBERT WILNER, as agent for Air Seas Charter Service, Inc., purchased a 24 foot Floton Seacraft boat in Ft. Lauderdale, Florida.

5. On or about March 6, 1973, defendant STEVEN SMITH and co-conspirator Richard Thurlow boarded a boat in Miami, Florida.

6. On or about March 7, 1973, defendant STEVEN SMITH and co-conspirator Richard Thurlow possessed approximately 700 lbs. of marijuana on Williams Island, Bahama Islands.

7. On or about May 13, 1973, defendants ROBERT WILNER and JOHN DOE, a/k/a "Anthony", boarded an airplane at John F. Kennedy International Airport in the City of New York and flew to Ft. Lauderdale, Florida.

8. In or about May, 1973, defendant JOHN DOE, a/k/a "Anthony", and co-conspirator Gerald Mitchell drove from Ft. Lauderdale, Florida to the Rye Town Hilton Hotel in Portchester, Westchester County, New York.

9. In or about May, 1973, defendants ROBERT WILNER, DOMINIC MECCA and JOHN DOE, a/k/a "Anthony", and co-conspirator Gerald Mitchell met at the Rye Town Hilton Hotel in Portchester, Westchester County, New York and had a conversation.

10. In or about June, 1973, defendants ROBERT VISSA and NICHOLAS CALABRO and co-conspirator Gerald Mitchell drove from the State of Maine to Stamford, Connecticut where they met and had a

conversation with defendants JOHN DOE, a/k/a "Anthony" and ROBERT WILNER.

11. On or about June 10, 1973, defendants JOHN DOE, a/k/a "Anthony", and GARY STEPHAN boarded a boat in Ft. Lauderdale, Florida.

12. On or about June 11, 1973, defendant ROBERT WILNER and co-conspirator Gerald Mitchell landed an airplane on Long Island in the Bahama Islands.

13. On or about June 11, 1973, defendants RICHARD PALMER and ROBERT VISSA landed an airplane on Long Island in the Bahama Islands.

14. In or about June, 1973, defendants PAUL STEPHAN, DOMINIC MECCA, NICHOLAS CALABRO, ROBERT WILNER, ROBERT VISSA and RICHARD PALMER and co-conspirator Gerald Mitchell met at Pier 66 Hotel, Ft. Lauderdale, Florida and had a conversation.

15. In or about June, 1973, defendants GARY STEPHAN and JOHN DOE, a/k/a "Anthony" returned to Ft. Lauderdale, Florida by boat.

16. In or about June, 1973, co-conspirator Gerald Mitchell possessed approximately 260 pounds of marijuana.

(Title 21, United States Code, Sections 846 and 963.)

SECOND COUNT

The Grand Jury further charges:

In or about the month of May, 1973, in the Southern District

of New York, JAMES ADAMS, RICHARD BELANGER, NICHOLAS CALABRO, DOMINIC MECCA, RICHARD PALMER, STEVEN SMITH, GARY STEPHAN, PAUL STEPHAN, ROBERT VISSA, ROBERT WILNER, and JOHN DOE, a/k/a "Anthony", the defendants, unlawfully, intentionally and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 500 pounds of marijuana.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

FOREMAN

PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APPENDIX B

UNITED STATES OF AMERICA

-against-

73 Cr.

DOMINIC MECCA, et al,

1102

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed duly verified affidavit of SAMUEL BOXER, attorney for the defendant, DOMINIC MECCA, and upon the Indictment and proceedings had heretofore, the undersigned will move before the Honorable Morris E. Lasker, United States District Judge for the Southern District of New York at the United States Court House, Foley Square, Borough of Manhattan, New York, on the 9th day of September, 1974, or as soon thereafter as counsel can be heard, for an order suppressing the evidence of Richard Palmer, a co-defendant, herein on the ground that same was wrongfully obtained and that it be ordered excluded as evidence against the defendant MECCA, and that any or all statements made by defendant on or about February 22nd, 1973, be similarly ordered suppressed and/or for a hearing, and for such other and further relief as may seem just and proper.

DATED: White Plains, New York

August 26, 1974

Yours, etc.,

SAMUEL BOXER
Attorney for Defendant
DOMINIC MECCA
Office & P.O. Address
128 Court Street
White Plains, New York
Telephone 914 946-2131

TO:

HON. PAUL J. CURRAN
United States Attorney
Southern District of New York
United States Court House
Foley Square
New York, N. Y.

DANIEL J. PYKETT, ESQ.
Assistant United States Attorney,
of Counsel

AFFIDAVIT OF DOMINIC MECCA ANNEXED TO FOREGOING
MOTION TO SUPPRESS

13a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

DOMINIC MECCA, et al,

Defendants.

STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

ss.:

DOMINIC MECCA, being duly sworn, deposes and says:

I am one of the defendants in the above proceeding.
This Court will recall that sometime ago in or about May 7,
1974, deponent was severed from the main case of the United
States v. Adams, et al.

I respectfully submit this affidavit in support of
this motion to suppress as evidence certain information
unlawfully obtained from your deponent in violation of the
laws of this State, the United States and the United States
Constitution, or for a pretrial hearing because of illegal
eavesdropping by Agent DeMico, et al.

This Court is familiar with the previous trial of
this matter, but just to primarily recap, may I respectfully
state that an indictment was returned against me and others
herein, a copy of which is annexed hereto on or about
December 12, 1973.

Deponent was arraigned on that date along with the
others and pleaded not guilty and as the Court will recall
it was set for trial on May 6, 1974, and my case was severed
on motion of defendant Wilner.

Deponent is charged with various sections of U. S. Code, in short, to distribute and import into and out of the United States, marijuana.

I am informed by my attorney that on February 13, 1974, he made a motion for the Bill of Particulars and inspection, (which has only been partially supplied to date) but at no time was he informed that a Mr. Palmer was a so-called, double agent, for the Government. As a matter of fact, this did not come to our attention until the trial itself and the reading of the transcripts which was furnished to us on the Court's order by Mr. Thau. There are several pages missing in the transcripts given to us, namely, pages 1345 to 1350, and page 1389 and all pages beyond page 1758.

At the trial of the matter, Richard Palmer testified (minutes, pages 1322-1730) about the so-called Wilner tape, (page 1342) (May 20, 1974); according to the transcript and the tapes, there came a time when it was revealed in Palmer's testimony (page 1392) that he met with a government agent and told him what had transpired within the past two days; he again talked with Mr. DeMicco, government agent (page 1453); Palmer admits being an informer at Mr. DeMicco's request (page 1475); he claims (page 1477) that he was a voluntary informer, presumably as against a paid informer; admits (page 1478) the first bugging began at or about the end of January, 1973 (page 1475), and met with Mr. DeMicco after that to confirm voices, etc., on the tapes taken.

Upon the testimony, it can be assumed by this Court that Mr. Palmer at Mr. DeMicco's request was bugged with a

bugging device and that Mr. DeMicco was listening to that conversation by himself confirming all that went on at the Purchase Country Club. There was some kind of a tape conversation being taken by DeMicco (not necessarily by way of phone) and then later on, he, Palmer, met DeMicco at the Purchase Country Club and went over the conversation (page 1479).

It is my attorney's feeling and inclination to state that he, Palmer, was a HUMAN SPIKE and that he, Palmer, was the trespasser in the conversations by way of being a HUMAN SPIKE that was being picked up at the same time as the conversations were taking place by Mr. DeMicco, the government agent.

ALL THIS WITHOUT A WARRANT

It is therefore respectfully requested that the conversation of February 22, 1973, occurring at Wilner's place be suppressed, or in the alternative, that a hearing be held in order to further corroborate the facts stated above.

No previous application has been made for the relief sought herein.

Sworn to before me this

29th day of August, 1974

Doris S. Salvo

DORIS S. SALVO
Notary Public, State of New York
No. 6045-0017
Qualified in Westchester County
Term Expires March 30, 1975

/s/

DOMINIC MECCA

EXCERPTS OF TRANSCRIPT OF PROCEEDINGS
ANNEXED TO FOREGOING MOTION TO SUPPRESS

16a

359

CTd47 * * * Palmer-direct

A That conversation took place in Mr. Wilner's home.

Q Was anyone else present?

A I arrived at Mr. Wilner's home and it was Mr. Wilner and myself and then later during the conversation Mr. Belanger and Mr. Mecca arrived.

Q Prior to that meeting with Mr. Wilner and later with Mr. Mecca and Mr. Belanger, had you met with anyone else?

MR. BOXER: It has not been established that there was a subsequent conversation. I object to the form of that question as being leading.

THE COURT: We can ask whether he met with anybody before he met with Mr. Wilner.

Did you?

Q Did you meet with anybody --

A Meaning referring to --

Q On February 22, before you met with Mr. Wilner, did you meet with anyone else?

A Before the conversation?

Once again, I met with Mr. De Micco and at that time I was outfitted with another bugging device, Kel set.

Q And were you wearing that bugging device when you met with Mr. Wilner and with Mr. Mecca and Mr. Belanger?

1 GTd48 Palmer-direct

2 A Yes, I was.

3 Q Did you have a conversation with them?

4 A I did.

5 Q To your knowledge, was that conversation
6 recorded?

7 A It was.

8 Q Was it recorded with your consent?

9 A It was.

10 Q I show you what has been marked as Government
11 Exhibits 40 and 40A for identification, and ask you if you
12 can identify those exhibits?

13 A I can identify both tapes as being a tape of the
14 conversation on February 22 between myself, Mr. Wilner,
15 Mr. Mecca and Mr. Belanger.

16 Q And how did you identify them?

17 A My initials are inscribed on the reel, on both
18 reels.

19 Q Have you listened to this entire conversation?

20 A I have listened to both the tapes and they are
21 in full context --

22 Q Approximately how long did that conversation
23 take?

24 A Quite some time. I don't remember the exact
25 time. I would say possibly an hour and a half, two hours,

1 GTd49

Palmer-direct

2 longer.

3 Q Does the conversation that is contained on
4 those two tapes accurately reflect the conversation which
5 you had with Mr. Wilner and Mr. Mecca and Mr. Belanger on
6 February 22?

7 A They do.

8 Q I show you Government Exhibit 40B for identifi-
9 cation, and I ask you if you can identify that.

10 A It has my initials carved into the tape reel by
11 my hand and I marked it with an E to indicate that it would
12 be excerpts of the conversation that we have been talking
13 about.

14 THE COURT: Would be or it is?

15 THE WITNESS: It is.

16 Q And do the excerpts of that long conversation as
17 contained on that exhibit accurately reflect the conver-
18 sation you had with Mr. Wilner, Mr. Mecca and Mr. Belanger?

19 A It does.

20 Q I show you Government Exhibit 40C for identifi-
21 cation and ask you if you can identify that.

22 A This would be the transcript of the --

23 THE COURT: Don't use the expression "it would
24 be."

25 A This is the transcript of the tape, the excerpts.

1 GTd50 Palmer-direct

2 Q The excerpts?

3 A Yes.

4 Q And have you compared that transcript with the
5 tape itself of the excerpts?

6 A I have.

7 Q And does the transcript accurately transcribe
8 the conversation contained on Government Exhibit 40B?

9 A It does.

10 MR. PYKETT: Your Honor, I offer Government
11 Exhibit 40B in evidence.

12 THE COURT: Does 40B include a conversation at
13 which Mr. Mecca was present?

14 THE WITNESS: It does.

15 THE COURT: Mr. Boxer?

16 MR. BOXER: I would object to it, if your Honor
17 please.

18 THE COURT: On what ground?

19 MR. BOXER: May I have a separate side bar on
20 this, your Honor?

21 THE COURT: Yes, you may.

22 (At the side bar.)

23 MR. BOXER: I don't believe I have the 3500
24 material first on this.

25 Secondly --

GTd51

Palmer-direct

1
2 THE COURT: What do you mean, on this? Do you
3 mean on this witness?

4 MR. BOXER: No, on 40B.

5 THE COURT: There is no 3500 material on the
6 tape. There is only 3500 material relating to a witness and
7 I understood Mr. Pykett had given you that

8 Is that correct, Mr. Pykett?

9 MR. PYKETT: That's correct.

10 MR. BOXER: Secondly -- I may be mistaken, but
11 in case I am not, I would make a motion for a delay until
12 I would get that material or else move for a mistrial if I
13 didn't get it. I don't want to be caught in the middle of
14 a cross-examination with something like this.

15 THE COURT: I simply don't understand what
16 material you are referring to.

17 Mr. Pykett represents that he has given you all
18 the 3500 material that relates to this witness.

19 MR. BOXER: And a separate excerpt of this?

20 MR. PYKETT: Yes. I also got the transcript,
21 if that is what he is referring to, of the entire conver-
22 sation and the excerpts.

23 THE COURT: There is nothing else.

24 MR. BOXER: One other thing, Judge. At the
25 request of the defendant, I move at this time for a withdrawal

1 GTd52

Palmer-direct

2 of a juror because the jury itself, on the voir dire of the
3 jury, was not asked whether or not they would be favorable
4 or unfavorable to the obtaining of tapes in this particular
5 manner that the government is introducing in this case at
6 this particular time.

7 THE COURT: I deny the motion on two grounds:

8 First of all, I don't think it was necessary
9 to ask the jury that question and, secondly, if it was
10 necessary to ask it, it was an obligation of the defense
11 counsel who was told that the Court would put other questions
12 to the jury if requested to make such a inquiry and no
13 such request was made.

14 MR. BOXER: Exception.

15 (In open court.)

16 THE COURT: The objections are overruled and
17 Exhibit 40B is received in evidence.)

18 (Government Exhibit Number 40B was received in
19 evidence.)

20 MR. PYKETT: Your Honor, it is now 4:15. May I
21 have some time to set this up?

22 THE COURT: You can set it up.

23 As I have indicated to counsel, I am sorry,
24 ladies and gentlemen. There are two matters, two other
25 cases that I have to handle at this time and since we are

* * *

1 gtrm 59

Palmer-cross

2 Q I don't hear you, Mr. Palmer.

3 A According to the FAA he could --

4 Q I am talking about the FAA.

5 A As far as the FAA goes, he was capable of flying
6 the airplane to Florida.

7 Q As a matter of fact, he didn't need you at that
8 point, is that correct?

9 A No, that is incorrect.

10 Q He did need you?

11 A He did.

12 Q To navigate or to operate?

13 A To supervise, I would say.

14 Q To supervise?

15 A Yes.

16 Q Did Mr. DeMicco say to you in words more or less
17 to this effect in January of 1973 in front of Mr. Mason --

18 MR. PYKETT: I will object to this, your Honor.

19 THE COURT: He is asking what DeMicco said. He
20 has a right to.

21 MR. PYKETT: It is calling for hearsay.

22 THE COURT: I do not know whether it is proof that
23 Mr. DeMicco said it.

24 Go ahead.

25 Q Did he say anything to you about reporting every-

1 gtrm 60

Palmer-cross

2 thing that Wilner did, everything that Mecca did, everything
3 that Belanger did, and did he give you more or less a rundown
4 of what he thought they were doing?

5 A He told me that he felt that they were involved
6 in a smuggling operation into the United States and he had
7 asked me to inform him of our whereabouts, if there were any
8 changes in our itinerary and if there were any -- well, if
9 there was a decision to go to Jamaica to pick up marijuana
10 he wanted to know about it. That was what he asked or said.

11 Q And did he tell you, if necessary, to assist them
12 in that operation, or did that come later?

13 A At that time I told him that I was not really
14 interested, and that he asked me just to stay with them and
15 just go along with anything that happened.

16 Q Including assistance, is that correct?

17 A No, I would say --

18 Q Not to argue the point, Mr. Palmer, if you were
19 supervising you would be assisting, wouldn't you?

20 THE COURT: You are arguing the point, though.
21 You got his testimony.

22 MR. BOXER: I am asking him if he agrees with that.

23 Q Do you agree with that, if you are supervising --

24 THE COURT: Mr. Boxer, it does not make any
25 difference whether he agrees whether assisting is supervising.

1 gtrm 61 Palmer-cross

2 You can ask him if he was assisting, you can ask him if he was
3 supervising.

4 He said he was supervising.

5 Did you assist?

6 THE WITNESS: I was supervising Mr. Wilner in
7 flying the aircraft, yes.

8 Q Did he tell you to assist in any plans, in case any
9 materialized to smuggle?

10 A He asked me just to go along --

11 Q Just answer that yes or no. Can you?

12 A Can you repeat the question, please?

13 THE COURT: Read back the question, please, Mr.
14 Reporter.

15 (Question read.)

16 THE COURT: Do you understand the question?

17 THE WITNESS: Yes.

18 Q The answer is yes?

19 THE COURT: No. I asked him if he understood the
20 question and he said yes.

21 MR. BOXER: I am sorry.

22 THE COURT: What is the answer to the question?

23 THE WITNESS: I would -- no. I would say no.

24 Q At the time of your arrest, just to come back now
25 twelve months later --

* * *

1 gtrm 75

* * *

2 courts --

3 MR. BOXER: Yes, I do.

4 THE COURT: The reason that even so I would be
5 unwilling to put the question of entrapment to the jury is
6 because the Federal testimony, and I think it is elsewhere,
7 too, is whether or not there is any evidence that the alleged
8 entrapper induced the defendant into committing a crime which
9 he was otherwise not willing or unready to commit.

10 MR. BOXER: On the question of voluntariness.

11 THE COURT: You may call it that.

12 I have heard nothing in Mr. Palmer's direct testi-
13 mony or the testimony of any other witness which leads me to
14 believe that any Government agent, and I am willing to admit
15 for the purposes of this discussion that Palmer is to be
16 regarded as a Government agent, induced Mr. Mecca to take any
17 of the actions which he took.

18 I will review that ruling after you have completed
19 your cross examination. Perhaps --

20 MR. BOXER: I say, I can't do it by an offer of
21 proof, it is obvious.

22 THE COURT: No, not by an offer of proof.

23 MR. BOXER: Okay. Thank you, your Honor.

24 (Luncheon recess)

25

* * *

1 gtrm 96

Palmer-cross

2 Q That you took on, that you played in the Purchase
3 Country Club --

4 THE COURT: Did you play it? You have not said
5 that.

6 THE WITNESS: No, I didn't play it.

7 Q You didn't play it? You just gave him the tape?

8 A No. The Kel set was a transmitting device which was
9 transmitted to a receiver and the receiver was connected to a
10 tape recorder, it was one unit, and that unit was in the
11 possession of Mr. DeMico at all times.

12 Q Did he play it back for you?

13 A Did he play it back for me?

14 THE COURT: At that time?

15 A No, I don't believe he did.

16 THE COURT: Mr. Palmer, if you were there 15
17 minutes and the conversation lasted an hour, he couldn't have
18 played the whole thing, could he?

19 THE WITNESS: No, he could not play the whole thing.

20 MR. BOXER: You see why it was relevant, Judge.

21 THE COURT: Did he play any of it?

22 THE WITNESS: At one of the tapes that I had made
23 Mr. DeMico had played, I believe, a portion of the tape back,
24 but I don't believe it was --

25 Q Now you are changing your story, you understand that.

* * *

* * *

1 gtrm 120

Palmer-cross

2 the evidence established as to all the propositions that you
3 are talking about.

4 If you want to make that motion, I will assume
5 arguendo that all the facts you have stated are correct.

6 What is your motion?

7 MR. BOXER: The motion is, if your Honor please,
8 that the February 22 tape, and I think that is 40-A now --
9 is that correct?

10 THE COURT: The tape as distinct from the
11 transcript?

12 THE BOXER: The transcript.

13 THE COURT: That is 40-C.

14 MR. BOXER: And the tape itself, because that was
15 played to the jury, be suppressed on the ground that it was
16 obtained without anyone's consent --

17 THE COURT: It was not, it was obtained with the
18 consent of Mr. Palmer.

19 MR. BOXER: Well, that has not been quite -- he
20 said it was consent, but there was nothing really brought out--

21 THE COURT: Mr. Boxer, are you a lawyer or a high
22 school student?

23 MR. BOXER: Well, can I say this, Judge: Consent
24 is a legal conclusion. I am saying to you now there are not
25 any facts --

1 gtrm 121

Palmer-cross

2 THE COURT: You are putting the proposition to me
3 as a judge and I am ruling on your propositions and I am
4 ruling as a matter of law, in my opinion, the evidence
5 establishes that it was done with the consent of one of the
6 parties to the conversation within the requirements of the law
7 and the Federal Communications Act.

8 MR. BOXER: I understand.

9 THE COURT: Therefore, the motion is denied on
10 those grounds.

11 What other motion do you have?

12 MR. BOXER: As part of that motion, Judge, I would
13 like to -- because you did not allow me to put in a reply in
14 that particular motion -- was that there was no evidence and
15 still no evidence that nobody was deliberately -- that they
16 were deliberately, I should say, that the agents and this
17 defendant --

18 THE COURT: You mean this defendant or witness?

19 MR. BOXER: Well, both.

20 THE COURT: Who are you talking about, Palmer or --

21 MR. BOXER: Palmer and the other defendants -- no,
22 this particular defendant, because it certainly was without
23 their consent, that they were violating the State law as well,
24 and in my opinion the way I read the cases is that I am
25 entitled to a special hearing, which your Honor denied on that

1 gtrm 122

Palmer-cross

2 point.

3 THE COURT: I did deny it and it is a matter that
4 you can press on appeal if there is a conviction, but there
5 is no point in going over and over and over it again and I
6 have ruled on it.

7 MR. BOXER: Your Honor has asked me why I am putting
8 these questions to the witness.

9 I cannot be in a position where you are restricting
10 me and attempt to defend the case and I object to the
11 restriction. That is the point.

12 THE COURT: You are explaining to me why you are
13 bringing these points out and I am ruling in my opinion as a
14 matter of law they are either irrelevant or that they fall
15 short of the mark that you are trying to shoot at.

16 MR. BOXER: How can I if you stop me in my cross
17 examination?

18 THE COURT: Wait a minute. I stopped you because
19 of the same thing. We are going around in circles.

20 MR. BOXER: I don't think so. I think you are
21 trying to do this, and I might say with all frankness, Judge,
22 that you have put a pretty tight schedule on this case and I
23 realize you have a tight schedule --

24 THE COURT: I will stay here for ten days trying
25 this case, if necessary, as I did with the predecessor case,

1 gtrm 123

Palmer-cross

2 but I have an obligation to see to it that question which I
3 consider to be irrelevant is not pursued indefinitely and the
4 Court of Appeals has agreed with us on that.

5 What is your next legal point?

6 MR. BOXER: On this particular witness?

7 THE COURT: Is there anything further on that?

8 MR. BOXER: No, no. This is the whole thing as
9 far as this particular point is concerned.

10 THE COURT: I am ruling that you cannot question
11 this witness with regard to the details of the bugging
12 mechanism in the plane because it does not make any difference
13 who paid for it or anything else, that on your theory the
14 mere fact that the Government paid for it and knew about it
15 constitutes some kind of defense I disagree with you and,
16 therefore, I consider the question to be irrelevant and I am
17 ordering you not to go into that question.

18 MR. BOXER: All right.

19 One other thing, Judge. I do not have Mr. DeMicco's
20 reports concerning the transcript, how the transcript was made,
21 how it was done, when it was done.

22 THE COURT: The original transcript?

23 MR. BOXER: Yes, I am talking about the original.

24 MR. PYKETT: Mr. DeMicco is not a witness so there
25 is no 300 material with respect to that.

1 gtrm 124

Palmer-cross

2 THE COURT: Is there anything contained in that
3 that you believed under the rule of Brady v. Marland would be
4 available to the defendant?

5 MR. PYKETT: No, your Honor.

6 MR. ROSEN: Judge, the witness has stated that he
7 did not attribute the names in the original transcript. I
8 think we are entitled to know who did.

9 THE COURT: Get the witness and ask him.

10 MR. BOXER: We did ask him.

11 MR. ROSEN: He says he does not know. You asked
12 him. He said he does not know.

13 THE COURT: No. I mean, call Mr. DeMiccio as a
14 witness if you want.

15 MR. BOXER: I said I was going to, but your
16 Honor is stopping me.

17 THE COURT: No, I did not stop you. I said the
18 material you wanted to ask up to that point is irrelevant,
19 but if you want to ask Mr. DeMiccio who made the transcript,
20 go ahead and ask him.

21 MR. BOXER: All right.

22 Is he available?

23 MR. PYKETT: I can ask. The last I heard he was
24 in Jamaica.

25 THE COURT: Jamaica where?

1 gtrm 125

Palmer-cross

2 MR. PYKETT: Jamaica, West Indies.

3 MR. BOXER: I thought you meant New York.

4 THE COURT: That is too bad. I am not going to
5 stop the trial to bring him back from Jamaica.

6 MR. BOXER: I told him that I was going to use
7 DeMiccio and I asked him to be available today or anytime
8 when I needed him.

9 MR. PYKETT: Let me put that straight. He did not
10 say that. He said that he was thinking about calling Mr.
11 DeMiccio and that he would let me know.

12 THE COURT: In any event, Mr. Boxer --

13 MR. BOXER: Let me say this on the record. I
14 couldn't anticipate that this young man who is testifying now,
15 Palmer, was going to testify the way he did. I thought --
16 as a matter of fact, the way I read some of the situation
17 the way I understood it was that he did go over that tape to
18 identify the voices in the Purchase Country Club. That is my
19 understanding.

20 What his testimony was going to be --

21 THE COURT: Where did you get that understanding
22 from?

23 MR. BOXER: I don't know. I got it some place.

24 THE COURT: If you got it from the transcript of
25 the prior trial, you can cross examine this witness on the

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1 basis of it, otherwise we cannot go on imagination and I am
2 not going on an informal conversation between counsel with
3 regard to the availability of the witness. It is insufficient
4 for me to rule that we should halt the trial to get a witness
5 back.
6

7 I acknowledge that I am anxious, of course, to
8 conclude this trial, no more than any other trial because I
9 have many of them to do, but I am not in the least interested
10 in curtailing any line of questioning that will be fruitful.
11 I have no personal interest in the outcome of this case,
12 obviously.

13 MR. BOXER: We know that, Judge.

14 THE COURT: And I am quite prepared to go on
15 tomorrow if we need to. I would just like to move along with
16 things that I consider to be productive and that is why I
17 called you in here and I hope you understand my attitude
18 toward the case better.

19 MR. BOXER: I have had a lot of judges had that
20 attitude and as far as I am concerned I don't take any --
21 frankly, I am not beholden to any judge telling me how to
22 handle my defense. I do it my own way after 40 years of
23 experience.

24 If you think I am acting like a high school student,
25 you are wrong, Judge.

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2 THE COURT: Mr. Boxer, that is for you to decide.
3 I am telling you to obey my instructions.

4 MR. BOXER: I will tell you this, Judge. There is
5 a Court of Appeals decision, People v. Blakley, where a judge
6 made similar remarks to me and two years later he was reversed.

7 THE COURT: I may very well be reversed, but I
8 want to get on with the process.

9 MR. BOXER: I just want to get that clear on the
10 record.

11 THE COURT: It should be clear on the record.
12 (In open court.)

13 BY MR. BOXER:

14 Q Mr. Palmer, you say you were cooperating with the
15 Government, which you are doing now, is that correct? You
16 are cooperating with the Government now and testifying as a
17 Government witness?

18 A Yes -- I didn't --

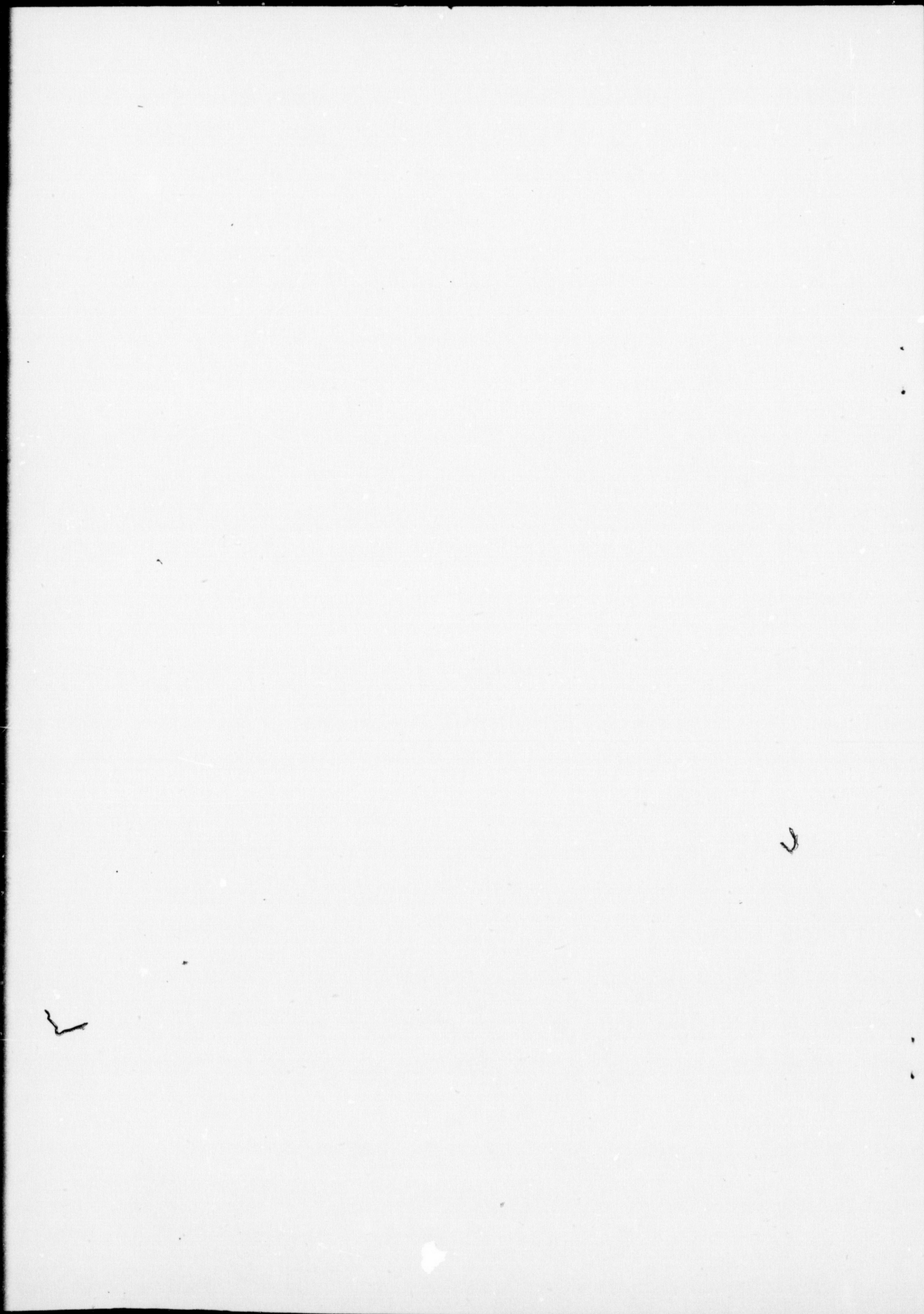
19 THE COURT: Yes. He said, are you testifying as a
20 Government witness.

21 THE WITNESS: I said yes.

22 Q You are cooperating with the Government now, is
23 that correct?

24 A Yes.

25 Q Sometime ago you failed to file your income tax



US COURT OF APPEALS: ~~XXXX~~ SECOND DEPARTMENT

Index No.

USA,

Plaintiff-Appellee,

- against -

Affidavit of Personal Service

DOMINIC MECCA,

Defendant-Appellant.

STATE OF NEW YORK, COUNTY OF

ss.:

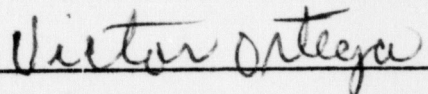
I, Victor Ortega, *being duly sworn,*
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York
That on the 13th day of February 1975 at Foley Square, New York

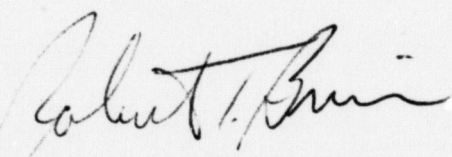
deponent served the annexed Brief & Appendix upon

Paul Curran

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 13th
day of February 1975


VICTOR ORTEGA


ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975